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October 10*, 11-12, 2007

Hyatt Regency on Town Lake • Austin, Texas

**Wednesday Evening Session:
On Your Mark: Getting Started With Insurance Coverage*

SPONSORED BY

THE INSURANCE LAW SECTION OF THE STATE BAR OF TEXAS
AND THE UNIVERSITY OF TEXAS SCHOOL OF LAW

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WEDNESDAY EVENING, OCT. 10, 2007*

*Included in conference registration.

6:00 p.m. 2.00 hrs including .50 hr ethics

There will be one 15-minute break during this session.

On Your Mark: Getting Started With Insurance Coverage*

What every insurance practitioner should be aware of when handling insurance claims and litigation. This discussion will include:

Investigate Yourself Into Coverage

Investigating facts related to coverage in the beginning of a claim is essential to obtain maximum coverage and to prevent handling claims where no coverage exists.

Anatomy of an Insurance Policy

While there are differences among insurance forms, there are also common elements. Understanding the basic structure of policies saves time and aids with coverage analysis.

Managing Insurance Information in an Uncertain World

When, how and what to ask for and how to protect it during the claims and litigation process. This will include a discussion of what information is available, what to do with the information, and how to protect confidentiality and privilege, especially in light of the new E-Discovery rules.

Linda M. Dedman, Dallas, TX
Meloney Cargil Perry, Dallas, TX
Bob Roberts, Austin, TX
Speaker TBD

8:15 p.m. Adjourn

THURSDAY MORNING, OCT. 11, 2007

Presiding Officer: Beth D. Bradley, Dallas, TX

8:00 a.m. Registration Opens

Includes continental breakfast.

8:50 a.m. Welcoming Remarks

9:00 a.m. .50 hr

Pending Cases

Important insurance issues still pending in the Texas Supreme Court and the Fifth Circuit: an educated guess!

Russell H. McMains, Corpus Christi, TX

9:30 a.m. .50 hr

A Practical Approach to Concurrent Causation

Practical application of the concurrent causation doctrine, with a focus upon burdens of proof, evidentiary issues, use of experts, and the jury charge.

Veronica Carmona Czuchna, Austin, TX

10:00 a.m. .67 hr

Prejudice

This session will address the confusing body of precedent concerning the "prejudice" requirement for insurers whose policyholders have breached a covenant or condition to coverage. Topics will include when prejudice must be demonstrated; the meaning of the *Hernandez* decision; the role of the Department of Insurance in creating a prejudice requirement; the intersection between prejudice law and the long-standing rules governing insurance policy construction; and the difficult decisions facing insurance companies who know of a suit, but whose policyholders have not provided notice of requested representation. The speakers will attempt to navigate the conflicting duties arising under the contract, ethical concerns of an attorney-client "relationship" with an absent client and recent cases addressing the "prejudice" element in a statutory environment mandating liability coverage to protect the injured party.

Mary J. Ibarra, San Antonio, TX
J. Hampton Skelton, Austin, TX

10:40 a.m. Break

10:55 a.m. .50 hr

The Folly of Fortuity

Texas courts are increasingly applying the fortuity doctrine in insurance cases. This presentation will focus on the propriety of this doctrine in the liability context.

Ernest Martin Jr., Dallas, TX

11:25 a.m. .50 hr

Agents/Brokers

This topic will focus on the duties owed by agent/brokers to insureds, insurers and third parties. The topic will address how and when those duties may arise. The topic will also address practical issues such as the impact of a settlement with the insurer on an E&O action against the agent/broker as well whether such doctrines as the Gandy doctrine that apply to insurers would also apply to agents/brokers.

R. Brent Cooper, Dallas, TX

LUNCHEON PRESENTATION

11:55 a.m. Pick Up Box Lunch
Included in conference registration fee.

12:10 p.m. 1.00 hr ethics

Fraud

Insurance Fraud: What is it? What can you do about it? And how does it impact civil litigation?

Kyson M. Johnson, Dallas, TX
Lisa A. Songy, Dallas, TX
David Wenholz, Austin, TX

THURSDAY AFTERNOON

Presiding Officer: David L. Plaut, Austin, TX

1:30 p.m. .50 hr

The History of Article 21.21 of the Texas Insurance Code

A complete understanding of Article 21.21 (now Chapter 541) of the Texas Insurance Code—the most potent weapon in the hands of insurance consumers—requires an understanding of where the statute came from and the changes it has undergone in the hands of the courts and legislature since it became law in 1973.

Phillip K. Maxwell, Austin, TX

2:00 p.m. .50 hr

Post-Litigation Bad Faith Issues

Some argue an insurer's duty of good faith continues after the filing of a bad faith suit. Does it? Should it? If it is alleged, how can it be defended? And, most importantly, what are the traps for unwary counsel in making such arguments?

Christopher W. Martin, Houston, TX

2:30 p.m. .50 hr

Myths, Mistakes and Misconceptions

A discussion of common misunderstandings of, or the arguments to circumvent, coverage issues impacting the duty to defend and indemnify and the right to declaratory relief.

Beth D. Bradley, Dallas, TX
Vincent E. Morgan, Houston, TX

3:00 p.m. Break

3:15 p.m. .75 hr

Additional Insureds

Party crashers—coming to the party as an “additional insured.”

David J. Schubert, Dallas, TX
Patrick J. Wielinski, Arlington, TX

4:00 p.m. .50 hr including .25 ethics

Show Me the Money: Recovery of Attorney’s Fees in the Insurance Coverage Case

A guide to the various avenues of attorney’s fees recovery in an insurance case including prerequisites for recovery and pitfalls to avoid.

Jill M. Cronin, Austin, TX

4:30 p.m. .50 hr ethics

Liability Insurers Suing Lawyers

If insurance defense lawyers represent only insureds that are sued as tortfeasor and if only clients can sue lawyers for malpractice, how can the liability insurer that hires and pays defense counsel have standing to sue the defense lawyer who botches the job? Some say it cannot. Yet these kinds of suits are becoming more and more common around the country. What is the meaning of all this and what does—or should—the future hold?

Michael Sean Quinn, Austin, TX

5:00 p.m. **Adjourn**

FRIDAY MORNING, OCT. 12, 2007

Presiding Officer: Lee H. Shidlofsky, Austin, TX

8:30 a.m. .50 hr

Supreme Court Update

Justice Scott A. Brister, Austin, TX

9:00 a.m. .50 hr

Claimant’s Beware: The Claim Process and Notice, Cooperation, Examination Under Oath, and Appraisal Policy Provisions

How is the claim process affected by the above policy conditions or “insured’s duties”? What action must an insured take or refrain from taking post-occurrence, claim, or suit, to avoid forfeiting coverage?

Charles L. Levy, Waco, TX

9:30 a.m. .67 hr

Declaratory Judgment Actions

Direct actions by claimants, the many corners rule, and the new rules for litigation coverage in declaratory judgment actions.

Lee H. Shidlofsky, Austin, TX
Stephen E. Walraven, San Antonio, TX

10:10 a.m. **Break**

10:20 a.m. .50 hr

Cancellation and Non-Renewal Issues

A review of the proper procedures for cancelling and non-renewing personal lines and commercial lines policies in Texas.

Elizabeth Ann Gilday, Dallas, TX

10:50 a.m. .50 hr including .25 hr ethics

Claims-Made Coverage Issues and Recent Developments

The Texas-centric review of recent cases and hot-button topics in claims-made coverage litigation. Issues addressed will include: (i) developments in Texas (and beyond) in “prompt notice” cases; (ii) tail coverage and the specificity of reporting necessary; and (iii) the “known loss” rule in the claims-made context.

Steve Skarnulis, Austin, TX

11:20 a.m. .67 hr

The Jury Charge in First-Party Insurance Cases

A discussion from both the policyholder and carrier perspectives regarding the drafting, submission and appellate preservation issues involved in the preparation of the jury charge in first-party coverage and bad faith cases, including issues related to the submission of breaches of policy conditions, fortuity, concurrent causation, particularly in light of new policy forms, the feasibility of broad-form submission, and Casteel issues.

Michael W. Huddleston, Dallas, TX
Mark L. Kincaid, Austin, TX

LUNCHEON PRESENTATION

12:00 p.m. **Pick Up Box Lunch**
Included in conference registration fee.

12:15 p.m. .83 hr ethics

Innovations in Litigation: Apology as a Litigation Resource

In the past few years, apology has gained momentum as a litigation and claims mitigation resource, especially in healthcare settings. This program will examine the apology movement from both a theoretical and practical perspective and will highlight emerging litigation and statutory trends.

Moderator: Michael Sean Quinn, Austin, TX
Lee Taff, Dallas, TX

FRIDAY AFTERNOON

Presiding Officer: Bob Roberts, Austin, TX

1:05 p.m. .50 hr

Game Time! Whaddaya Know About Coverage?

Test your knowledge of coverage law in a game show format! Audience members will compete

with the help of some of Texas’ brightest young coverage lawyers on a variety of insurance coverage and ethics topics. Are you smarter than a coverage lawyer?

Host: Brian S. Martin, Houston, TX
Panelists: Jamie R. Carsey, Houston, TX
Stephanie S. Rojo, Houston, TX

1:35 p.m. .42 hr

Policy Buybacks: The Perks and the Pitfalls

Policy buybacks arise when the insurer and insured work together to arrive at a solution which frees them both from obligations under their insurance policy. However, if not carefully crafted, such buybacks can have unintended consequences. This session will discuss the concept of a policy buyback, its potential benefits and some unexpected perils.

L. Kimberly Steele, Dallas, TX

2:00 p.m. .42 hr

80th Legislative Update: New Insurance Laws Passed and Failed

A summary of insurance related legislation passed that will impact insurers, consumers, agents, lawyers, and business, including a summary of bills that did not pass or were vetoed. This session will also examine legislative changes that may be part of “interim” studies.

Jay Alan Thompson, Austin, TX

2:25 p.m. .42 hr

In the Driver’s Seat: Personal Auto Update

An overview of recent case developments and legislative changes affecting the personal auto policy.

Melinda R. Burke, Fort Worth, TX

2:50 p.m. **Break**

3:00 p.m. .42 hr

Reinsurance

What goes on behind the scenes can affect every aspect of your case and what you can do about it.

James W. Walker, Dallas, TX

3:25 p.m. .42 hr

Hot Cases

Texas Supreme Court Today: Held “made whole” doctrine does not apply and full subrogation benefits must be paid to health carrier.

David L. Plaut, Austin, TX

3:50 p.m.

.67 hr

Damages

Most liability policies agree to pay those sums that a policyholder becomes legally obligated to pay "as damages," not otherwise excluded under the policy. This session examines what constitutes covered "damages," including punitive damages, civil fines and penalties, economic damages, attorney's fees, investigative, mitigation and preventative expenses, and costs associated with environmental remediation and medical monitoring.

J. Mark Lawless, Austin, TX
Joseph A. Ziemianski, Houston, TX

4:30 p.m.

Adjourn

COMMENTS FROM PAST INSTITUTE

"Overall excellent program."

"The panel presentations were excellent and filled with the hot topics. Great job."

"Great idea to incorporate the box lunch presentations in the program!"

"Wednesday night's primer is very helpful."

"This is my first Insurance Law conference, and I will certainly be back."

"I do a lot of insurance coverage work and I found this seminar VERY useful."

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Includes Course Binder and Wednesday Evening Session, Thursday/Friday Box Lunch Presentations

Early Registration Fee due by Wednesday, Oct. 3, 2007 \$475.00

Registration Fee after Wednesday, Oct. 3, 2007 \$525.00

CONFERENCE PUBLICATIONS AND MEDIA

Allow 2-4 weeks from the conference date for delivery.

Course Binder *Without* Conference Registration \$200.00

Note: Conference registration includes Course Binder.

Audio CD Set \$175.00

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AUSTIN

October 10*, 11-12, 2007

CONFERENCE LOCATION



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208 Barton Springs Road
Austin, TX 78704
512-477-1234

SPECIAL RATE \$169

good through September 19, 2007
(subject to availability)

Parking: \$5 self-parking;
(subject to change)

KEY DATES

Registration & Cancellation

October 3, 2007—5 p.m.

last day for early registration

add \$50 for registrations
received after this time

October 5, 2007—5 p.m.

last day for full refund

October 8, 2007—5 p.m.

last day for partial refunds

\$50 processing fee applied

October 10, 2007—6 p.m.

Wednesday evening session begins

October 11, 2007—9 a.m.

conference begins

Top Reasons to Attend the 2007 Insurance Law Institute

Wed. Evening Session: On Your Mark: Getting Started with Insurance Coverage

The session will cover issues and pitfalls of interest to those investigating facts related to coverage in both a first and third party context. Also addressed will be the anatomy of a policy, including issues specific to liability and property. The session will conclude with a discussion of the growing concerns regarding the appropriate management of insurance information in an electronic world. Included in conference registration fee.

Definitive Updates

Get a comprehensive overview of major insurance decisions from the Texas Supreme Court, Fifth Circuit, and Texas Courts of Appeals—the impact on insurance and tort practices will be highlighted. New insurance laws that passed and failed during the 80th Legislative Session will be discussed, as well as a definitive history of the development and current stance of Article 21.21 of the Texas Insurance Code.

Special Lunch Presentations

Enjoy informative lunch presentations each day: On Thursday, a panel examines fraud and its impact on civil litigation. Friday's lunch presentation explores the latest phenomenon in litigation: "apology" as a litigation resource, especially in healthcare settings.

Practice Strategies for Coverage Litigation

These presentations will include the practical aspects addressing coverage concerns, along with modern misconceptions and mistakes surrounding this analysis, such as the practice of pursuing and defending against declaratory relief actions, recent issues in the concept of "buyback policies," the special concerns attendant to "claims made" policies, plus an in-depth reminder of the requirements and duties placed upon an insured in the claims process. In addition, the procedures for preparing a proper jury charge in a first party suit will be discussed.

Developing Issues

Get up to speed with the latest and greatest developments in coverage law, including "prejudice," fortuity doctrine, additional insureds, recovery of attorney's fees, cancellation/non-renewal issues, and concurrent causation in the wake of the recent Katrina ruling, what that means for Texas and more.

Exposures Beyond Insurance

Thursday's presentation will address exposures to a carrier outside the terms and conditions of a policy through its dealings with agents and brokers, including the practical aspects of dealing with professional liability insurance claims arising in such settings. Friday's presentation includes a much anticipated discussion on the role of reinsurance in claims handling and litigation.

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